

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEROME JUNIOR WASHINGTON,

Plaintiff,

v.

DAVID DURST, LPM, *et al.*,

Defendants.

No. 4:22-CV-01243

(Chief Judge Brann)

ORDER

AND NOW, this 29th day of December 2023, in accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED** that:

1. Defendants' motion to dismiss (Doc. 20) pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED**.
2. Plaintiff's Eighth Amendment medical indifference claim is **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted.
3. Plaintiff's Eighth Amendment conditions-of-confinement claim against defendant Durst, to the extent one is asserted, is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) as frivolous and malicious.
4. Plaintiff's official capacity claims are **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted.
5. Within 21 days from the date of this Order, Plaintiff, if desired, may file an amended complaint in accordance with the accompanying Memorandum.

6. If no amended complaint is timely filed, dismissal of Plaintiff's Eighth Amendment medical indifference claim will convert to dismissal with prejudice, and the Court will close this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

Chief United States District Judge